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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Accusation
Against:

Case No. 2013-723

FIRST AMENDED ACCUSATION

13 **DEBBIE FITCHETT, aka DEBBIE**
14 **JEANNE WEED, aka DEBBIE JEAN**
15 **FITCHETT, aka DEBBIE SEDA-**
FITCHETT
16 **2416 Starlight Glen**
Escondido, CA 92026

17 **Registered Nurse License No. 401572**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this First Amended Accusation
23 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
24 Department of Consumer Affairs.

25 2. On or about August 31, 1986, the Board of Registered Nursing issued Registered
26 Nurse License Number 401572 to Debbie Fitchett, also known as Debbie Jeanne Weed, also
27 known as Debbie Jean Fitchett, also known as Debbie Seda-Fitchett (Respondent). The
28

1 Registered Nurse License was in full force and effect at all times relevant to the charges brought
2 herein and will expire on April 30, 2014, unless renewed.

3 JURISDICTION

4 3. This First Amended Accusation is brought before the Board of Registered Nursing
5 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
6 references are to the Business and Professions Code (Code) unless otherwise indicated.

7 4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline
8 any licensee, including a licensee holding a temporary or an inactive license, for any reason
9 provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

10 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
11 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
12 licensee or to render a decision imposing discipline on the license. Under section 2811,
13 subdivision (b) of the Code, the Board may renew an expired license at any time.

14 STATUTORY PROVISIONS

15 6. Section 482 of the Code states:

16 Each board under the provisions of this code shall develop criteria to evaluate
17 the rehabilitation of a person when:

18 (a) Considering the denial of a license by the board under Section 480; or

19 (b) Considering suspension or revocation of a license under Section 490.

20 Each board shall take into account all competent evidence of rehabilitation
21 furnished by the applicant or licensee.

22 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
23 revoke a license on the ground that the licensee has been convicted of a crime substantially
24 related to the qualifications, functions, or duties of the business or profession for which the
license was issued.

25 8. Section 493 of the Code states:

26 Notwithstanding any other provision of law, in a proceeding conducted by a
27 board within the department pursuant to law to deny an application for a license or to
28 suspend or revoke a license or otherwise take disciplinary action against a person who
holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the

1 licensee in question, the record of conviction of the crime shall be conclusive
2 evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order

3 to fix the degree of discipline or to determine if the conviction is substantially related
4 to the qualifications, functions, and duties of the licensee in question.

5 As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

6 9. Section 2761 of the Code states:

7 The board may take disciplinary action against a certified or licensed nurse or
8 deny an application for a certificate or license for any of the following:

9 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

10

11 (f) Conviction of a felony or of any offense substantially related to the
12 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

13

14 10. Section 2762 of the Code states:

15 In addition to other acts constituting unprofessional conduct within the meaning
16 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

17

18 (b) Use any controlled substance as defined in Division 10 (commencing with
19 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
20 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
dangerous or injurious to himself or herself, any other person, or the public or to the
21 extent that such use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

22 (c) Be convicted of a criminal offense involving the prescription, consumption,
or self-administration of any of the substances described in subdivisions (a) and (b) of
23 this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
24 the conviction is conclusive evidence thereof.

25

26 11. Section 2765 of the Code states:

27 A plea or verdict of guilty or a conviction following a plea of nolo contendere
28 made to a charge substantially related to the qualifications, functions and duties of a
registered nurse is deemed to be a conviction within the meaning of this article. The

1 board may order the license or certificate suspended or revoked, or may decline to
2 issue a license or certificate, when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under the

3 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
4 or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
guilty, or dismissing the accusation, information or indictment.

5 12. Section 2770.11 of the Code states:

6 (a) Each registered nurse who requests participation in a diversion
7 program shall agree to cooperate with the rehabilitation program designed by the
committee and approved by the program manager. Any failure to comply with the
8 provisions of a rehabilitation program may result in termination of the registered
nurse's participation in a program. The name and license number of a registered nurse
9 who is terminated for any reason, other than successful completion, shall be reported
to the board's enforcement program.

10 (b) If the program manager determines that a registered nurse, who is
11 denied admission into the program or terminated from the program, presents a threat
to the public or his or her own health and safety, the program manager shall report the
12 name and license number, along with a copy of all diversion records for that
registered nurse, to the board's enforcement program. The board may use any of the
13 records it receives under this subdivision in any disciplinary proceeding.

14 REGULATORY PROVISIONS

15 13. California Code of Regulations, title 16, section 1444, states:

16 A conviction or act shall be considered to be substantially related to the
17 qualifications, functions or duties of a registered nurse if to a substantial degree it
evidences the present or potential unfitness of a registered nurse to practice in a
18 manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

19 (a) Assaultive or abusive conduct including, but not limited to, those violations
20 listed in subdivision (d) of Penal Code Section 11160.

21 (b) Failure to comply with any mandatory reporting requirements.

22 (c) Theft, dishonesty, fraud, or deceit.

23 (d) Any conviction or act subject to an order of registration pursuant to Section
290 of the Penal Code.

24 14. California Code of Regulations, title 16, section 1445 states:

25

26 (b) When considering the suspension or revocation of a license on the grounds
27 that a registered nurse has been convicted of a crime, the board, in evaluating the
rehabilitation of such person and his/her eligibility for a license will consider the
28 following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

COSTS

15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE

(May 11, 2011 Criminal Conviction for DUI on March 12, 2011)

16. Respondent has subjected her license to disciplinary action under sections 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On or about May 11, 2011, in a criminal proceeding entitled *People of the State of California v. Debbie Sedafitchett*, in San Diego County Superior Court, case number CN290762, Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. The court found true the special allegation that Respondent's blood alcohol concentration (BAC) was .15 percent or more, within the meaning of Vehicle Code section 23578. An additional count of violating Vehicle Code section 23152, subdivision (b), driving with a BAC of .08 or higher, was dismissed pursuant to a plea agreement.

b. As a result of the conviction, on or about May 11, 2011, Respondent was granted five years summary probation, and ordered to complete a nine-month First Conviction Program, and a MADD Victim Impact Panel session. Respondent was further ordered to complete 270 hours of volunteer work, pay fines and fees in the amount of \$1,952, and to comply with the terms of standard DUI probation. Respondent was warned by the court's Substance Abuse Assessment Unit that any alcohol-related non-compliance would require a referral to alcohol treatment. The court certified Respondent's BAC as .31 percent.

c. The facts that led to the conviction are that on or about the evening of March 12, 2011, officers from the Escondido Police Department responded to a vehicle collision involving Respondent. Respondent's vehicle incurred major damage to the passenger side. An officer met with Respondent at a nearby hospital where she had been transported for her injuries. The officer noted that Respondent had a significant laceration to her right eye. The officer conducted pre-field sobriety tests; Respondent eyes were bloodshot and watery, and her speech was slurred. Respondent told the officer she was currently taking prescription medications. The officer did not conduct further tests because of Respondent's medical condition. A blood sample was taken which was subsequently analyzed with a BAC of .31 percent. Respondent was cited for driving under the influence and released to the care of the hospital.

SECOND CAUSE FOR DISCIPLINE

(May 23, 2012 Criminal Conviction for DUI on March 23, 2012)

17. Respondent has subjected her license to disciplinary action under sections 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On or about May 23, 2012, in a criminal proceeding entitled *People of the State of California v. Debbie Jean Fitchett, aka Debbie Jeanne Fitchett*, in San Diego County Superior Court, case number CN304895, Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. The court found true the special allegations that Respondent was convicted of the

1 same offense within the previous ten years (as described in paragraph 15, above), within the
2 meaning of Vehicle Code section 23626 and 23540, and that Respondent's blood alcohol
3 concentration (BAC) was .15 percent or more, within the meaning of Vehicle Code section
4 23578. An additional count of violating Vehicle Code section 23152, subdivision (b), driving
5 with a BAC of .08 or higher, was dismissed pursuant to a plea agreement.

6 b. As a result of the conviction, on or about May 23, 2012, Respondent was
7 granted five years summary probation, and committed to the custody of the sheriff for two days,
8 with credit for two days. An additional 180 days in custody was stayed pending successful
9 completion of probation, which included an 18-month Multiple Conviction Program, a MADD
10 Victim Impact Panel session, payment of fines and fees in the amount of \$2,418, and compliance
11 with standard DUI probation. The court certified Respondent's BAC as .30 percent.

12 c. The facts that led to the conviction are that on or about the evening of March
13 23, 2012, a San Diego County Sheriff's deputy was dispatched to investigate a hit and run
14 accident with a possible DUI driver (Respondent) at a parking lot in San Marcos. Witnesses
15 reported the license plate; deputies located Respondent at a stop light a short distance away. The
16 deputy noted that Respondent walked with an unsteady gait, she had a strong odor of an alcoholic
17 beverage about her breath and body, her speech was slurred, and her eyes were bloodshot and
18 watery. The deputy attempted to conduct field sobriety tests with Respondent, but due to her
19 inebriated state, he stopped when he felt that performing the tests would compromise
20 Respondent's safety. Respondent refused to perform the preliminary alcohol screening test.
21 Respondent was arrested and charged with driving under the influence, and for violating the
22 conditions of her probation for a prior DUI.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(November 19, 2012 Criminal Conviction for DUI on September 4, 2012)**

25 18. Respondent has subjected her license to disciplinary action under sections 490 and
26 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
27 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
28 follows:

1 a. On or about November 19, 2012, in a criminal proceeding entitled *People of the*
2 *State of California v. Debbie Jean Fitchett, aka Debbie Jeanne Fitchett, aka Debbie J. Seda-*
3 *Fitchett*, in San Diego County Superior Court, case number M157049, Respondent was convicted
4 on her plea of guilty of violating Vehicle Code section 23152, subdivision (b), driving with a
5 BAC of .08 percent or more, a misdemeanor. The court found true the special allegation that
6 Respondent was twice convicted of the same offense within the previous ten years (as described
7 in paragraphs 15 and 16, above), within the meaning of Vehicle Code sections 23626 and 23540.
8 Pursuant to a plea agreement, the court dismissed additional misdemeanor counts of driving under
9 the influence of alcohol/drugs (Veh. Code, § 23152, subd. (a)), driving on a license suspended for
10 a prior DUI conviction (Veh. Code, § 14601.2, subd. (a)), driving on a suspended license (Veh.
11 Code, § 14601.5, subd. (a)), and unlicensed driver (Veh. Code, § 12500, subd. (a)).

12 b. As a result of the conviction, on or about November 19, 2012, Respondent was
13 granted five years summary probation, and ordered to serve 120 days in the custody of the San
14 Diego County Sheriff's County Parole and Alternative Custody Unit (C-PAC) program, and
15 required to wear a SCRAMX device.¹ Respondent was ordered to complete an 18-month
16 Multiple Conviction Program, and a MADD Victim Impact Panel session, to run concurrent with
17 the sentences in paragraphs 15 and 16, above. Respondent was further ordered to pay fines, fees
18 and restitution in the amount of \$2,892, and to comply with the terms of standard DUI probation.
19 The court certified Respondent's BAC as .18 percent.

20 c. The facts that led to the conviction are that on or about the evening of
21 September 4, 2012, officers from the San Diego Police Department were dispatched to assist
22 security officers with the U.S. Navy who had detained Respondent after she was observed driving
23 into the curb and off the road as she was leaving military property. When the officer arrived on
24 scene, he observed Respondent sitting on the curb, handcuffed, and in uniform. A security officer

25 _____
26 ¹ The SCRAMX device is a tamper-resistant bracelet that a DUI offender wears around
27 his/her ankle. The SCRAMX bracelet tests the DUI offender's sweat for alcohol at least once per
28 hour. The SCRAM bracelet wirelessly transmits the results at least once per day via the
 SCRAMX modem to a regional monitoring center. If the DUI defendant removes the SCRAMX
 bracelet or consumes alcohol, the regional monitoring center will notify the court.

1 stated to the police officer that he was patrolling the military recreational facility with his trainee
2 when he observed Respondent's vehicle behind them drive onto the curb. They pulled over and
3 allowed Respondent to pass them. They followed Respondent and observed her nearly drive off
4 the road into a drainage ditch. The security officers activated their overhead lights. Respondent
5 did not stop and continued off the property. While stopped at a stop sign, the security officer
6 pounded on Respondent's driver's window to get her attention. Respondent claimed to be the
7 base commander and ordered them to leave her alone. When she became belligerent and
8 argumentative, they handcuffed her until the arrival of the San Diego Police Department, who had
9 off base jurisdiction. The SDPD officer observed that Respondent's eyes were bloodshot, watery
10 and glassy, and he could smell a strong odor of an alcoholic beverage on her breath. Respondent
11 had difficulty standing or walking without assistance. Respondent was not able to complete any
12 of the field sobriety tests as explained and demonstrated by the officer. After nearly falling
13 several times, the officer discontinued the tests for Respondent's safety. Respondent denied
14 having consumed any alcohol. Respondent provided two breath samples which were analyzed by
15 the preliminary screening device with a BAC of .197 and .185 percent, respectively. Respondent
16 eventually stated she had consumed two beers at the bar and did not feel too intoxicated to drive
17 home. Respondent was arrested for driving under the influence.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(April 10, 2013 Criminal Convictions for DUI, Reckless Driving Evading Arrest and** 20 **Driving on a Suspended License on February 19, 2013)**

21 19. Respondent has subjected her license to disciplinary action under sections 490 and
22 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
23 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
24 follows:

25 a. On or about April 10, 2013, in a criminal proceeding entitled *People of the*
26 *State of California v. Debbie Jean Fitchett, aka Debbie Jeanne Fitchett, aka Debbie J. Seda-*
27 *Fitchett*, in San Diego County Superior Court, case number SCD246495, Respondent was
28 convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (a), driving

1 under the influence of alcohol, Vehicle Code section 23152, subdivision (b), driving with a BAC
2 of .08 percent or more, both felonies. Respondent also pled guilty to a violation of Vehicle Code
3 section 2800.2, subdivision (a), evading a peace officer reckless driving, and Vehicle Code
4 section 14601.2, subdivision (a), driving on a suspended license from DUI, both misdemeanors.
5 The convictions included enhancements because Respondent had four or more previous DUI
6 convictions within the previous ten years (as described in paragraphs 15-17, above), within the
7 meaning of Vehicle Code sections 23550(a) and 23578. Respondent is scheduled to be sentenced
8 on June 6, 2013.

9 b. The facts that led to the conviction are that on or about February 19, 2013, the
10 CHP responded to a call about a driver who was potentially intoxicated driving down the
11 freeway. When the Officer arrived, he witnessed Respondent swerving in and out of traffic lanes,
12 driving in two lanes, and cutting other cars off going approximately 75 miles per hour.
13 Respondent drove for several miles, nearly hitting several vehicles, and ignored the officer's
14 lights and verbal commands over the public address system to pull over. The Officer had to ram
15 Respondent's vehicle to get her to stop as she was exiting the freeway. After she initially
16 stopped, Respondent attempted to drive away, so another officer had to ram her vehicle to stop
17 her. Respondent continued to rev her engine, had her car in gear, and refused to comply with the
18 officer's commands, so she was physically removed from the vehicle by two officers.
19 Respondent, who was found to be on probation from her last DUI, was arrested at that time. She
20 admitted to consuming one half of a beer and told the officers she was aware of the lights, sirens,
21 and police cars but thought they were for someone else. A blood draw reflected a .19 BAC.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Use of Alcohol in a Dangerous Manner)**

24 20. Respondent has subjected her registered nurse license to disciplinary action under
25 section 2762, subdivision (b) of the Code for unprofessional conduct in that on or about March
26 12, 2011, March 23, 2012, September 4, 2012, and February 19, 2013, as described in paragraphs
27 15-18, above, Respondent used alcoholic beverages to an extent or in a manner that was
28

1 dangerous and injurious to herself, and to others, when she operated a motor vehicle while
2 significantly impaired by alcohol, and caused two collisions.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Conviction of Alcohol-Related Criminal Offenses)**

5 21. Respondent has subjected her registered nurse license to disciplinary action under
6 section 2762, subdivision (c) of the Code for unprofessional conduct in that on or about May 11,
7 2011, May 23, 2012, November 19, 2012, and April 10, 2013 as described in paragraphs 15-18,
8 above, Respondent was convicted of criminal offenses involving the consumption and/or self-
9 administration of alcohol.

10 **DISCIPLINARY CONSIDERATIONS**

11 22. To determine the degree of discipline, if any, to be imposed on Respondent,
12 Complainant alleges that Respondent was terminated from its Nurse Diversion Program as a
13 public safety risk on February 14, 2013. The circumstances are as follows:

14 23. Respondent was referred to the Board's Diversion Program² after she was convicted
15 of driving under the influence of alcohol, as described above. Respondent withdrew from the
16 program prior to meeting with the Diversion Evaluation Committee (DEC) because she stated that
17 she needed to continue working. Respondent then was arrested for driving under the influence of
18 alcohol again and she voluntarily requested to join the program at that time.

19 24. On January 10, 2013, Respondent was enrolled into Diversion. On or about February
20 1, 2013, Respondent tested positive for aminoclonazepam-578 ng/ml (Clonazepam). On
21 February 13, 2013, Respondent tested positive for Hydrocodone 152 ng/ml (Vicodin) and
22 Hydromorphone 298 ng/ml (Dilaudid).

23 25. On February 14, 2013, Respondent was reviewed for her first DEC meeting.
24 Respondent admitted to being an alcoholic and reported several, but not all, of her DUI's to the

25 ² The Diversion Program is a voluntary, confidential program for registered nurses whose
26 practice may be impaired due to chemical dependency or mental illness. The goal of the
27 Diversion Program is to protect the public by early identification of impaired registered nurses
28 and by providing these nurses access to appropriate intervention programs and treatment services.
Public safety is protected by suspension of practice, when needed, and by careful monitoring of
the nurse. The Diversion Program is currently managed by Maximus.

1 committee. Respondent also brought a bag of medication that was prescribed to her to the
2 meeting, which included Klonopin and Vicodin. When asked about the positive drug test for
3 aminoclonazepam-578 ng/ml on February 1, 2013, she admitted that she was not forthcoming
4 about all of the medications she was taking and had been taking Klonopin and Xanax for about 4
5 years, but that she was now on a taper. She reported that she has been taking pain pills off and on
6 for several years but is not addicted to them. Respondent also reported to the DEC that she had
7 continued to work and that her employer does not know that she is on diversion.

8 26. On February 14, 2013, the Diversion Evaluation Committee told Respondent they
9 were unwilling to accept her into the program and voted to close the case with public risk status
10 due to Respondent's failure to be entirely honest to them in the interview, such that they could not
11 properly assess her needs and determine if she was a good candidate for the program.

12 PRAYER

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board of Registered Nursing issue a decision:

15 1. Revoking or suspending Registered Nurse License Number 401572, issued to Debbie
16 Fitchett, also known as Debbie Jeanne Weed, also known as Debbie Jean Fitchett, also known as
17 Debbie Seda-Fitchett;

18 2. Ordering Debbie Fitchett to pay the Board of Registered Nursing the reasonable costs
19 of the investigation and enforcement of this case, pursuant to Business and Professions Code
20 section 125.3;

21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: May 21, 2013

23 Louise R. Bailey
24 LOUISE R. BAILEY, M.ED., RN
25 Executive Officer
26 Board of Registered Nursing
27 Department of Consumer Affairs
28 State of California
Complainant

SD2012704722